

UNITED STATES DEPARTMENT OF AGRICULTURE

Office of the Secretary

Washington, D.C. 20250

July 11, 2006

SECRETARY'S MEMORANDUM 2400-007

USDA IMPLEMENTATION OF FEDERAL GUIDELINES ON RESEARCH MISCONDUCT

1 BACKGROUND AND PURPOSE

On December 6, 2000, the National Science and Technology Council, Office of Science and Technology Policy of the Executive Office of the President (OSTP) published in the Federal Register (65 FR 76260) the Federal Policy on Research Misconduct (OSTP Policy) as a final, government-wide policy addressing research misconduct to establish: (1) uniformity among the Federal agencies' definition of research misconduct, and (2) consistency in their processes for responding to allegations of research misconduct. The OSTP Policy defines research misconduct and establishes basic Federal guidelines for the conduct of fair and timely investigations of alleged or suspected infractions, and provides instruction on agency administrative actions when research misconduct is found. This Memorandum will establish U.S. Department of Agriculture (USDA or the Department) policy for implementation of the OSTP Federal Policy on Research Misconduct, such that the Department and all its agencies will comply with OSTP Policy requirements. Appendices to this Memorandum contain vital definitions, information, and implementation guidelines, and must be considered inseparable from this Memorandum. By June 30, 2007, the Department will publish in the Federal Register a final rule on extramural research misconduct. In addition, by the same date, the Department will publish a final rule on intramural research misconduct in the Federal Register or Department Directive System.

2 APPLICABILITY AND SCOPE

This Memorandum and its Appendices apply to:

- a The USDA and any and all agencies thereof that engage in or support research, as defined in Appendix C (hereafter referred to as "USDA Agencies")
- b All allegations of research misconduct (as defined in Appendix C) by performers or reviewers of research that use USDA resources, including:
 - (1) Employees of the USDA;
 - (2) Employees of other Federal agencies;

- (3) Employees of non-federal entities that receive USDA funding through procurement contracts, grants, cooperative agreements, or any other funding instruments, under the terms of those instruments;
 - (4) Individual consultants, under the terms of their appointments;
 - (5) Reviewers of applications who are not USDA employees and do not receive formal appointments.
- c Research conducted or managed for USDA by contractors, or supported by USDA and performed at research institutions (defined in Appendix C).

3 DEFINITIONS

Terms used in this Memorandum are defined in Appendix C.

4 POLICY

Consistent with the objective of the OSTP Policy to ensure public trust in USDA-conducted research and USDA Agencies' support for research, USDA Agencies shall promote the integrity of research conducted under their purview. The Office of the Under Secretary for Research, Education, and Economics (REE) will designate a USDA Research Integrity Officer (USDA RIO) and each USDA Agency that conducts research shall appoint an Agency Research Integrity Officer (see Section 6). Each USDA Agency that conducts research shall either:

- a establish procedures to foster integrity in research activities, to respond to allegations of research misconduct, and to remedy findings of research misconduct, consistent with applicable laws, regulations, the OSTP Policy, and the guidelines established by this Memorandum and its Appendices,

OR

- b shall initiate and sign a standing Memorandum of Understanding (MOU) between it and REE to have another USDA Agency act on its behalf in lieu of developing its own research misconduct procedures, as described in section 6b(2)(b) of this Memorandum.

The OSTP Policy defines "research misconduct" as "fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results." USDA hereby accepts and endorses OSTP's definition of research misconduct.

5 PROCEDURES

Guidance for implementation of the policy set forth by this memorandum is provided in Appendix A. The guidance sets forth requirements that pertain to research institutions in general, as well as specific requirements for intramural research institutions. Appendix B specifies the requirements to be implemented in research institutions that receive financial support from USDA Agencies through grants, agreements, or any other funding arrangements (extramural research institutions).

6 ASSIGNMENT OF RESPONSIBILITIES

- a Responsibilities of the Office of the Undersecretary of USDA for Research, Education, and Economics
 - (1) Delegation: The Office of the Undersecretary of USDA for Research, Education, and Economics (hereafter REE) is hereby delegated oversight authority for research misconduct proceedings within the Department. REE will oversee and monitor USDA agencies' implementation of this policy. REE must:
 - (a) Ensure that procedures are developed by USDA Agencies to address research misconduct, that these procedures are consistent with the guidelines established by this Memorandum and its Appendices, and that USDA Agencies adhere to their procedures when processing allegations of research misconduct;
 - (b) Assign allegations of research misconduct that are reported through the USDA Office of Inspector General (OIG) Hotline complaint system to the appropriate USDA agency; and
 - (c) Maintain a status report of research misconduct cases across USDA as a means of monitoring the progress toward resolution.
 - (2) Assignment of Coordinating Person or Group: REE will designate a USDA Research Integrity Officer (RIO). This USDA RIO will be responsible for the following:
 - (a) Overseeing USDA agency responses to allegations of research misconduct;
 - (b) Ensuring that agency research misconduct procedures are consistent with the guidelines set forth in this Memorandum;
 - (c) Receiving and assigning allegations of research misconduct reported by the public;

- (d) Developing Memoranda of Understanding with Agencies that elect not to develop their own research misconduct procedures, as described in B.2(2);
- (e) Monitoring the progress of all research misconduct cases; and
- (f) Serving as liaison with OIG to receive allegations of research misconduct when they are received via the OIG Hotline.

REE shall provide contact information for the USDA RIO on its website and any other appropriate medium. The USDA RIO may be reached at:

USDA Research Integrity Officer
214W Whitten Building
Washington, DC 20250
Telephone: 202-720-5923
Email: researchintegrity@usda.gov.

- (3) Notification of OIG: The USDA RIO shall notify the Assistant Inspector General for Investigations of all allegations of research misconduct if any are reported to the USDA RIO.

If at any point the research misconduct proceedings reveal any criminal or potentially criminal behavior involving USDA-funded research activities, the USDA RIO shall immediately report the potentially criminal behavior to OIG and coordinate with the appropriate USDA agency to ensure that all records, documents or other materials relating to the research misconduct allegation are provided to OIG. If OIG accepts the case for criminal investigation, it will assume responsibility for conducting the criminal investigation into the allegation.

- (4) Oversight While Agencies Develop Implementation Procedures: The USDA RIO will provide direction and oversight to ensure all required elements (detailed in Appendix A) are included in agency-specific procedures (described in Section B.2.) and that the procedures are consistent with this Memorandum.

b Responsibilities of USDA Agencies Conducting or Supporting Research

- (1) Reporting of Allegations: USDA agencies conducting or supporting research shall report all allegations of research misconduct reported to them to the OIG, using any of the methods described in Section VII, and the USDA RIO. The USDA agency will provide all records, documents and other materials relating to a research misconduct allegation to OIG when requested. A USDA Agency responding to allegations of research misconduct will provide status reports to the USDA RIO during each of the separate phases (i.e., inquiry, investigation, and adjudication, as defined in Appendix C) of its response to the allegation.

- (2) Development of Implementation Procedures: Each USDA Agency that conducts or supports research shall:
- (a) Develop implementation procedures to comply with the OSTP Federal Research Misconduct Policy and this Memorandum. Implementation procedures shall include, at a minimum, the requirements listed in Appendix A to this Memorandum. Agencies supporting extramural research shall ensure that the USDA Agency's procedures encompass the requirements listed in Appendix B to this Memorandum. Once adopted, each USDA Agency will handle reported research misconduct allegations according to its implementation procedures;

OR

- (b) In lieu of developing its own implementation procedures to comply with the OSTP policy, a USDA Agency may initiate a Memorandum of Understanding (MOU) with REE. Under the MOU, the USDA RIO shall assign another USDA Agency to act on behalf of the USDA Agency that has not developed an OSTP-compliant policy, with respect to research misconduct.
- (3) Adherence to Procedures/MOU: Each USDA agency will handle reported research misconduct allegations in accordance with its implementation procedures or MOU.
- (4) Designation of Agency RIO: Each USDA Agency conducting or supporting research shall appoint an Agency Research Integrity Officer (ARIO). The responsibilities of this individual are detailed in Appendix A.
- (5) Notice of Procedures/MOU: Upon completion of its implementation procedures or completion of its MOU with REE, a USDA Agency must publish its implementation procedures or MOU on its website, and make reasonable efforts to notify any and all interested parties and relevant stakeholders of the agency's procedures for handling allegations of research misconduct.
- (6) Reporting Research Misconduct: All USDA Agencies shall provide the name and contact information of OIG and the ARIO in the terms and conditions applied to any awards, grants, contracts, and all other funding mechanisms used to fund extramural research. These same terms and conditions shall also clearly state that allegations of research misconduct must be reported to OIG.

An intramural research institution shall announce the name and contact information of the Agency's ARIO and the OIG. Intramural research institutions shall also announce that research misconduct should be reported to OIG. Intramural research institutions shall make the preceding announcements through standard agency communication channels.

- (7) Referral to REE: If an allegation does not involve the agency to which it was reported, a USDA agency shall refer the allegation to REE for reassignment.
- (8) Date of Completion of Implementation Procedures/MOU: USDA Agencies shall develop implementation procedures or complete an MOU with REE by June 30, 2006.

c Responsibilities of Research Institutions

- (1) Reporting Allegations: All research institutions shall report all allegations of research misconduct involving USDA-funded projects reported to the research institution to the OIG Hotline.
- (2) Primary Responsibility: USDA Agencies and research institutions that conduct USDA-funded research are partners who share responsibility for the research process. USDA Agencies have ultimate oversight authority for USDA-funded research, but under the OSTP Policy, the research institutions where the USDA-funded research is conducted will bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with their own institution.

7 PUBLIC REPORTING INFORMATION

a Contact Information

Anyone who suspects that researchers or research institutions performing Federally-funded research may have engaged in research misconduct is encouraged to make a formal allegation of research misconduct to OIG. Suspected research misconduct may be reported to OIG using any of the following methods:

Via the OIG Hotline:

Telephone: (202) 690-1622

(800) 424-9121

(202) 690-1202 (TDD)

E-mail: usda_hotline@oig.usda.gov.

U.S. Mail: United States Department of Agriculture
Office of Inspector General
P.O. Box 23300
Washington, DC 20026-3399.

b Required Information when Making an Allegation

To the extent known, the following details should be included in any formal allegations made to the OIG:

The names of involved individuals and research projects,

- Sources of funding;
- Important dates;
- Any documentation that bears upon the allegation; and
- Any other potentially relevant information.

8 EFFECTIVE DATE

The provisions of this memorandum shall be effective immediately.

9 TERMINATION

This Memorandum shall remain in effect for 1 year from the date of signature.

MIKE JOHANNIS
SECRETARY OF AGRICULTURE

APPENDIX A**USDA MISCONDUCT REQUIREMENTS FOR USDA-FUNDED INTRAMURAL RESEARCH**

- 1.1. Adopt Implementing Procedures:** The USDA Agencies shall formalize the role of the research institution in ensuring that research is conducted under the highest ethical standards by implementing procedures to receive and process allegations of research misconduct. These procedures will reflect and comply with the directions of this memorandum and the guidelines listed in this Appendix. A copy of the procedures shall be provided to REE.
- 1.2. Designation of Agency Research Integrity Officer:** Each USDA Agency shall appoint an Agency Research Integrity Officer (ARIO) in their implementation procedures, and shall name an ARIO within 30 days of completing its procedures.
- 1.3. Responsibilities of ARIO:** The ARIO will be responsible for the following:
- Receiving and processing allegations of research misconduct as assigned by the USDA RIO;
 - Informing the OIG and the USDA RIO of allegations of research misconduct reported to the USDA Agency;
 - Ensuring that any records, documents and other materials relating to a research misconduct allegation are provided to OIG when requested;
 - Coordinating actions taken to address allegations of research misconduct with respect to extramural research with the research institution(s) at which the research misconduct is alleged to have occurred, and with the USDA RIO;
 - Overseeing proceedings to address allegations of research misconduct at intramural research institutions, and research institutions where extramural research occurs;
 - Ensuring that agency action to address allegations of research misconduct at USDA Agencies performing intramural research is performed at an organizational level that allows an independent, unbiased, and equitable process;
 - Immediately notifying OIG and the USDA RIO if behavior that is or may be criminal in nature is discovered at any point during the inquiry, investigation, or adjudication phases of the research misconduct proceedings;
 - Documenting the dismissal of the allegation, and ensuring that the name of the accused individual and/or institution is cleared if an allegation of research misconduct is dismissed at any point during the inquiry or investigation phase of the proceedings; and

- Other duties relating to research misconduct proceedings as assigned, including additional duties of the ARIO with respect to extramural research as described in Appendix B.

- 1.4. Research Misconduct at USDA Facilities:** The ARIO of the appropriate USDA Agency, in his or her sound discretion, shall determine which level of the USDA Agency is capable of conducting an independent, unbiased, and equitable process and assign responsibilities for research misconduct proceedings to the appropriate individuals or office within the Agency. The USDA Agency reserves the right to conduct inquiry, investigation, and adjudication processes at any level, including the headquarters level, of the appropriate USDA Agency.

Ordinarily, the “appropriate USDA Agency” should be the USDA Agency that has conducted the research in question. This is true regardless of whether the research in question has been funded using moneys appropriated to the particular agency where the alleged research misconduct is said to have occurred (an intramural research institution), or the research has been funded by grants, agreements, or any other financial arrangements with another Federal research Agency, including another USDA Agency (extramural research).

- 1.5. Inter-Agency Research Misconduct Procedures:** The purpose of this section is to address research misconduct that may involve more than one Federal Agency (to include more than one USDA Agency). When a USDA Agency provides funding for research conducted at another Federal Agency (within or outside USDA,) or a USDA research institution conducts research funded in whole or in part by another Agency (within or outside USDA,) ordinarily the research institution where the research misconduct is alleged to have occurred bears primary responsibility for inquiry, investigation, and adjudication of the research misconduct allegation, as stated in Section VI.C.2. All Federal Agencies that support or conduct research must comply with the OSTP Policy. All USDA Agencies that support or conduct research must comply with this Memorandum to implement the OSTP Policy.

- 1.5.1. Two or More Agencies within USDA:** If an allegation of research misconduct is made regarding research conducted at a USDA research facility (for example, an ARS lab) and that research is funded in whole or in part by a different USDA Agency (for example, CSREES’ National Research Initiative (NRI)), as stated in 1.5., the research institution (in the above example, ARS) will ordinarily be responsible for inquiry, investigation, and adjudication of the allegation of research misconduct. Dependent on the particular allegation and the circumstances surrounding it, however, it is possible that the Agency supporting the research (in this example, CSREES) may be the more appropriate Agency to conduct the inquiry, investigation, and adjudication of the allegation.

The process for determining which USDA Agency should conduct the research misconduct proceedings should permit the ARIO of the Agency conducting the research (in this example, ARS) and the ARIO of the Agency funding the research (in this example, CSREES) to confer to determine which Agency will conduct the inquiry, investigation, and adjudication of the allegation of research misconduct. If the relevant ARIOs cannot agree on which Agency shall conduct research misconduct proceedings, then the allegation shall be referred to the USDA RIO. The USDA RIO shall then assign the allegation to one of the relevant Agencies, and shall determine the level of the Agency at which the research misconduct allegation shall conduct inquiry, investigation, and adjudication. USDA Agencies supporting extramural research must also adhere to the guidelines listed in Appendix B to this memorandum.

1.5.2. Research Conducted by USDA Agency and Funded by Agency Outside USDA: Ordinarily, the USDA Agency conducting the research funded by a non-USDA Agency will initiate and carry out the inquiry, investigation, and adjudication of research misconduct allegations at the USDA Agency research facility, in accordance with the OSTP Policy. It is assumed that other, non-USDA Federal Research Agencies will also have research misconduct procedures in place to implement the OSTP Policy, and that these research misconduct procedures will be similar to those implemented by the USDA Agency. When conducting research funded by other, non-USDA federal agencies, USDA Agencies shall adhere to the research misconduct procedures, requirements, and/or procedures set by the funding Agency, and any relevant terms and conditions of the grant, agreement, or funding arrangement.

1.5.3. Extramural Research Conducted by Non-USDA Federal Agency and Funded by USDA Agency: It is presumed that all Federal research Agencies will have research misconduct procedures in place to comply with the OSTP Policy. A USDA Agency supporting extramural research conducted by a non-USDA Federal research institution may rely on the procedures in place at the other Federal research institution to conduct inquiry, investigation, and adjudication of allegations of research misconduct.

1.6. Reporting Chain: Members of the public are encouraged to make formal allegations of research misconduct to OIG, as described in the Secretary's Memorandum, Section VII. However, should a member of the public make a formal allegation of research misconduct to the USDA Agency RIO (ARIO) or the USDA RIO, the following process shall apply:

- All allegations of research misconduct received by the ARIO must be reported by the ARIO to the USDA RIO and the OIG. The ARIO will

then proceed according to the USDA Agency's research misconduct procedures.

- All allegations of research misconduct received by the USDA RIO must be reported by the USDA RIO to the Assistant Inspector General for Investigations, and assigned by the USDA RIO to the appropriate ARIIO to handle the allegation. The ARIIO will then proceed according to the USDA Agency's research misconduct procedures.

Usually, allegations of research misconduct will be received by the OIG, which will forward the allegations to the USDA RIO. The USDA RIO will then assign it to the appropriate USDA Agency ARIIO to handle the allegation. The ARIIO will then proceed according to the USDA Agency's research misconduct procedures.

- 1.7. **Existing Procedures:** The USDA Agencies may use their existing procedures for processing research misconduct allegations so long as they comply with the minimum requirements of this Memorandum. Nothing in this Memorandum is intended to supersede current USDA personnel management authorities.
- 1.8. **Appeals:** The USDA Agency procedures must include provisions for appealing findings of research misconduct. A USDA Agency may use its existing administrative appeals process to address findings of research misconduct.
- 1.9. **Remedies:** USDA Agencies must identify within their implementation procedures administrative actions that the agency may use to remedy findings of research misconduct. These administrative actions must include the recovery of funds as a potential sanction from an intramural research institution or any research institution conducting federally-funded research where a finding of research misconduct has been made. USDA Agencies may also include other administrative actions to remedy findings of research misconduct, including correction of the research record, debarment of the researcher(s) that engaged in the research misconduct, proper attribution, or any other action that the USDA Agency deems appropriate to remedy the instance(s) of research misconduct.
- 1.10. **Include in Terms and Conditions:** USDA Agencies must ensure that the provisions listed in Appendix B to this Memorandum are included in the terms and conditions of all grants, agreements, and funding arrangements between the USDA Agency funding the extramural research and the research institution conducting the extramural research.
- 1.11. **Research Institution's Ability to Process Research Misconduct Allegations:**
 - 1.11.1. **USDA Agencies supporting extramural research:** Implementation procedures developed by USDA Agencies must include the process described in Appendix B, Section 2.3., which the USDA Agency supporting extramural research at a non-Federal research institution will

use to determine whether the research institution is capable of undertaking its primary responsibility to inquire, investigate, and adjudicate allegations of research misconduct at the research institution in an unbiased, fair, timely, and otherwise appropriate manner.

1.11.2. USDA Agencies Conducting Intramural Research: If an allegation of research misconduct is made regarding intramural research performed at a USDA Agency, the ARIO must ensure that the actors are capable of carrying out inquiry, investigation, and adjudication, in an independent, unbiased, and equitable manner.

1.12. Other Resources: The USDA Agencies may use any available resources to respond to allegations of misconduct, including the Office of the Inspector General (OIG), Office of General Counsel (OGC), and expert consultants. However, to ensure a consistent and appropriate response to allegations of research misconduct by USDA intramural research institutions, the USDA Agency must first notify the USDA RIO of its intent to consult OIG, OGC, or other outside parties.

1.13. Minimum requirements for USDA Agencies Conducting Intramural Research: At a minimum, the USDA Agencies' implementation procedures for intramural research institutions shall include the following:

1.13.1. Responsibilities for handling each phase of the response to an allegation of research misconduct: inquiry, investigation, and adjudication. These responsibilities shall be assigned to organizations and officials that

- Understand the research and the research environment;
- Can ensure objectivity;
- Can provide due process; and
- Reach a timely resolution.

The responsibilities for adjudication shall be separate from those for inquiry and investigation. However, adjudication responsibilities may be assigned to individuals at higher levels within the same research institution's organization, or to a part of the research institution other than that which conducted the inquiry and investigation.

1.13.2. The circumstances, if any, under which the ARIO shall determine that the headquarters level of the USDA Agency should respond directly to an allegation (including but not limited to the exercise of authority provided in paragraph 1.4.) These may include, but are not limited to:

- A determination that the research institution is unable to conduct a thorough and unbiased inquiry and investigation;

- A determination that it is in the public interest for the headquarters level of the USDA Agency to conduct the inquiry and investigation; or
 - A determination that the allegation involves a small organization or an individual that cannot reasonably be expected to respond.
- 1.13.3.** Responsibilities for, and the form and timing of, notifying an individual that an allegation of research misconduct involving him or her has been made and its disposition.
- 1.13.4.** A requirement that the research institution immediately notify the ARIO and provide an explanation of the circumstances if:
- The public health or safety is at risk;
 - The research institution's resources or interests are threatened or at risk;
 - Research activities are to be suspended because of the inquiry into or investigation of the allegation;
 - Action to protect the interests of those involved in the inquiry into or investigation of the allegation is required from the headquarters of the USDA Agency;
 - A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;
 - The research community or public should be informed; or
 - There is a possible violation of civil or criminal law. If research misconduct proceedings reveal behavior that may be criminal in nature at any point during the proceedings, the USDA RIO and the Assistant Inspector General for Investigations must be notified immediately.
- 1.13.5.** Agency implementation procedures shall allow the ARIO to reassign the research misconduct proceedings. If the notice and explanation described in 1.13.6, or other information revealed during research misconduct proceedings indicate that the organization, group, or level of the intramural research institution or agency to which research misconduct proceedings were originally assigned is not capable of conducting an independent, unbiased, and equitable inquiry, investigation, and adjudication process, then the ARIO shall reassign the proceedings.
- 1.13.6.** A requirement that the intramural research institution report the outcome of all investigations to the ARIO after completing the investigation. Agency implementation procedures shall also include a requirement that the research institution report to the ARIO the outcome of the adjudication, if an investigation results in a finding of research misconduct, and the ARIO delegates the authority to

adjudicate the finding of research misconduct to the research institution. This reporting of adjudication shall contain the following, as available:

- A copy of the evidentiary record;
- The investigative report;
- The outcome of the adjudication;
- A summary of the findings;
- Any action taken; and
- Any other materials that bear on the allegation, finding, or adjudication.

1.13.7. Required documentation for each phase of the response to an allegation of misconduct and requirements related to document retention, storage, handling, and dissemination (see subparagraph 1.13.13 for requirements regarding confidentiality matters.) At a minimum, the documentation should include the following:

- The allegation;
- Methods and procedures used to gather information and evaluate the allegation during inquiry and investigation stages;
- Outcome of the investigation, to include the findings and supporting evidence, if any; and
- For findings of research misconduct, any recommended or imposed institutional sanctions, and any recommended corrective actions, including but not limited to recapture of funds.

When research misconduct is found, documentation shall also include evidence to support each element of a “finding of research misconduct”; that is,

- There be a significant departure from accepted practices of the relevant research community;
- The misconduct be committed intentionally, or knowingly, or recklessly; and
- Proof of the allegation by a preponderance of the evidence.

1.13.8. Procedures to protect the rights of those who make allegations of research misconduct to promote a climate where the informant does not fear retribution. Protections for those alleging research misconduct should include protection against retaliation or harm to their positions or reputations if the allegation was made in good faith.

1.13.9. Fair and objective procedures for the examination and resolution of allegations at the research institutions.

- 1.13.10.** Procedures to protect the rights of those who are alleged to have engaged in research misconduct in order to instill confidence that the individuals shall be treated in an impartial and professional manner. Protections for subjects of allegations of research misconduct should include the following, at a minimum:
- Providing subjects a description of substantial allegations made against them;
 - Giving subjects of allegations reasonable access to data and other supporting evidence related to the allegation; and
 - Affording them the opportunity to respond to the allegation.
- 1.13.11.** Procedures intended to ensure confidentiality during the inquiry, investigation, adjudication, and if necessary, administrative action processes. To the extent possible, consistent with a fair and thorough investigation and as allowed by law, the procedures shall limit knowledge about the identity of subjects and informants to those directly involved with the inquiry, investigation, adjudication, or administrative action, the ARIO and USDA RIO, and OIG. The procedures shall be in compliance with the Freedom of Information Act (FOIA) and the Privacy Act.
- 1.13.12.** Time frames for completing each phase of the response to an allegation of research misconduct: inquiry, investigation, adjudication, and administrative action.
- 1.13.13.** The authority to which an appeal of a finding of research misconduct may be made must not be an office or individual directly involved in the inquiry, investigation, or adjudication of an allegation of research misconduct. “Office” means that organizational component with formal responsibility for one or more phases of the response to an allegation of research misconduct. The organizational level to which appeals may be made may be defined by the USDA Agency, as long as there is an adequate separation of responsibilities and there is no appearance of bias, inequity, or conflict of interest. Agencies may utilize their currently-existing appeals procedures to process appeals of findings of research misconduct.
- 1.14. Department-wide Consistency of Implementation Procedures:** USDA Agencies electing to adopt implementing procedures shall consult with the USDA RIO while drafting implementation procedures to ensure that procedures are consistent with this Memorandum and with other USDA Agencies that elect to adopt implementing procedures.
- 1.15. Relationship to Other Requirements:** Some of the research covered by this Memorandum also may be subject to regulations of other governmental agencies

(for example, a University that receives funding from a USDA Agency and also under a grant from another Federal Agency). Research covered under this Memorandum that is also subject to requirements of other Agencies or funding sources must be conducted in compliance with all applicable requirements of this Memorandum. USDA Agencies may include in their implementation procedures a process for deferring to or collaborating with other Agencies when a research institution receives funding or support from multiple sources and would therefore be subject to multiple research agencies' research misconduct procedures.

For example, when a research institution or the OIG or a Federal agency other than the relevant USDA Agency, has promptly initiated its own inquiry and investigation, the relevant USDA Agency may wish to defer its own inquiry or investigation until it receives the results of that external inquiry and investigation. If the relevant USDA Agency does not receive the results of the external inquiry within what it believes to be a reasonable time, the relevant USDA Agency should proceed with its own inquiry and, if warranted, its own investigation.

- 1.16. Non-Compliance:** The USDA RIO is responsible for ensuring that USDA Agencies comply with this Memorandum by developing research misconduct procedures in accordance with this Memorandum, or signing standing MOUs, if more appropriate, to permit the USDA RIO to assign research misconduct proceedings to an appropriate USDA agency.

ARIOs are responsible for ensuring that USDA Agencies comply with their own implementation procedures and process allegations of research misconduct promptly and fairly. Instances of any intramural research institution failing to comply with this Memorandum shall be referred for resolution to the USDA RIO. Issues related to non-compliance by research institutions conducting extramural research supported by USDA Agencies shall be addressed, as provided by Appendix B, Section 2.9.

APPENDIX B

USDA RESEARCH MISCONDUCT REQUIREMENTS RELATED TO USDA-FUNDED EXTRAMURAL RESEARCH AND RESEARCH INSTITUTIONS CONDUCTING SUCH RESEARCH

2.1. Procedures: Research institutions conducting USDA-funded extramural research must foster an atmosphere conducive to research integrity. They must develop or have procedures in place to respond to allegations of research misconduct that ensure:

- Appropriate separations of responsibilities for inquiry and investigation, and adjudication;
- Objectivity;
- Due process;
- Whistleblower protection;
- Confidentiality; and
- Timely resolution.

2.2. Inquiry, Investigation, and Adjudication: A research institution conducting USDA-funded extramural research bears primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct allegations reported directly to it. An inquiry and investigation by a research institution conducting extramural research shall be performed in response to an allegation. An investigation need only be undertaken if the inquiry determines the allegation or apparent instance of research misconduct has substance. The responsibilities for adjudication must be separate from those for inquiry and investigation. In most instances, USDA will rely on a research institution conducting extramural research to promptly:

- Initiate an inquiry into any suspected or alleged research misconduct;
- Conduct a subsequent investigation, if warranted;
- Take action necessary to ensure the following: (1) The integrity of research; (2) The rights and interests of research subjects and the public; (3) The observance of legal requirements or responsibilities; and (4) Appropriate safeguards for subjects of allegations as well as informants.

2.3. USDA Panel to Determine Appropriateness of Research Misconduct Policy and Procedures at non-Federal Research Institutions conducting Research Supported by USDA Funds: Before USDA will rely on a research institution conducting extramural research to conduct an inquiry, investigation, and adjudication of an allegation of research misconduct, the USDA RIO or ARIO shall request that the research institution where the research misconduct is alleged provide a hard copy or web site of its policy and procedures related to research misconduct at the institution.

The applicable Research Integrity Officer (USDA- or Agency-level) shall convene a Panel comprised of the USDA RIO, as well as ARIOs from the Forest Service, Agricultural Research Service, and the Cooperative State Research, Education, and Extension Service. The Panel will review the relevant research institution's policy and procedures for compliance with the OSTP Policy and will collectively render a decision regarding the particular research institution's ability to adequately resolve research misconduct allegations. The ARIO will inform the research institution of the Panel's determination that its inquiry, investigation, and adjudication procedures are sufficient and that the research institution may proceed with the inquiry, investigation, and adjudication.

If the Panel determines that the research institution in question does not have sufficient policy and procedures in place to conduct inquiry, investigation, and adjudication proceedings, or that the particular research institution is in any way unfit or unprepared to handle the inquiry, investigation, or adjudication in a prompt, unbiased, fair, and independent manner, the ARIO shall inform the research institution at issue in writing of its decision. An appropriate USDA Agency, as determined by the Panel, shall then conduct the inquiry, investigation, and adjudication of the allegation of research misconduct in accordance with this Memorandum and the OSTP Policy.

In the specific instance where an allegation of research misconduct is made regarding extramural research conducted at a Federal research institution (whether USDA or not,) it is presumed that the Federal research institution will have adequate research misconduct procedures in place to address the allegation of research misconduct, because every Agency conducting research must comply with the OSTP Policy. USDA reserves the right to convene the Panel to assess the sufficiency of a Federal Agency's research misconduct procedures, should there be any question whether the Agency's procedures will ensure a fair, unbiased, equitable, and independent inquiry, investigation, and adjudication process.

- 2.4. **Reservation of Right to Conduct Subsequent Inquiry, Investigation, and Adjudication:** USDA reserves the right to conduct its own inquiry, investigation, and adjudication into allegations of research misconduct at a research institution conducting extramural research subsequent to the research institution's proceedings related to the same allegation. This may be necessary if the USDA or Agency-level RIO believes, in his or her sound discretion, that despite the Panel's finding that the research institution in question had appropriate and OSTP-compliant research misconduct procedures in place, the research institution conducting the extramural research at issue:

- Did not adhere to its own research misconduct procedures;
- Did not conduct research misconduct proceedings in a fair, unbiased, or independent manner;

- Has not completed research misconduct inquiry, investigation, or adjudication in a timely manner; or
- For any other reason it may be appropriate for the relevant USDA Agency to conduct research misconduct proceedings in lieu of the research institution conducting the extramural research at issue.

The USDA or Agency-level RIO shall reconvene the Panel, which will determine whether it is appropriate for the relevant USDA Agency to conduct the research misconduct proceedings related to the allegation(s) of research misconduct. If the Panel determines that it is appropriate for a USDA Agency to conduct the proceedings, the ARIIO shall immediately notify the research institution in question. The research institution shall then immediately provide the relevant USDA agency with documentation of the research misconduct proceedings the research institution has conducted to that point, and the USDA Agency shall conduct research misconduct proceedings in accordance with the Agency research misconduct procedures.

2.5. USDA Notification:

- 2.5.1.** Research institutions conducting USDA-funded extramural research are to promptly notify the OIG and the USDA RIO of all allegations of research misconduct involving USDA funds.
- 2.5.2.** Institutions are to promptly notify the ARIIO should the institution become aware during an inquiry or investigation that:
 - Public health or safety is at risk;
 - USDA's resources, reputation, or other interests need protecting;
 - Research activities should be suspended;
 - Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected;
 - A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process; or
 - The scientific community or the public should be informed; or
 - There is reasonable indication of possible violations of civil or criminal law. If research misconduct proceedings reveal behavior that may be criminal in nature at any point during the proceedings, the ARIIO, the USDA RIO and the Assistant Inspector General for Investigations must be notified immediately.

- 2.6. Communication of Research Misconduct Policies and Procedures:** Research institutions conducting USDA-funded extramural research should maintain and effectively communicate to their staffs policies and procedures relating to research misconduct, including the guidelines in this Appendix. Researchers and staff members conducting USDA-funded extramural research should also be informed as to when and under what circumstances USDA is to be notified of

allegations of research misconduct, and when and under what circumstances USDA should be updated on research misconduct proceedings.

2.7. Records and Documentation:

2.7.1. Documents Required: A research institution conducting USDA-funded extramural research must maintain the following documents related to an allegation of research misconduct at the research institution:

- Written statement of the original allegation;
- Formal notification to the subject of the allegation;
- Written outcome of the inquiry phase and supporting documentation;
- Methods and procedures used to gather information and evaluate the allegation during inquiry and investigation stages;
- Written report of the investigation, including the evidentiary record and supporting documentation; and
- If applicable, statement of recommended corrective actions and any response thereto, including any corrective action plan.

2.7.2. Reporting to USDA: Following completion of the investigation, the institution conducting extramural research must provide a copy of the evidentiary record, the report of the investigation, recommendations made to the institution's adjudicating official, and the written response of the individual that is the subject of the allegation to any recommendations. This information must be provided to the ARIO pursuant to Appendix B, Subparagraph 1.3.

2.7.3. Recordkeeping: A research institution that conducts extramural research, as the responsible legal entity for the USDA-supported research, has a continuing obligation to maintain adequate records for a research misconduct proceeding. The research institution conducting extramural research supported by USDA funds must:

- Either before or when the research institution notifies the researcher/respondent of the allegation, inquiry or investigation, promptly take all reasonable and practical steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence, and sequester them in a secure manner, except where the research records or evidence may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments;
- Where appropriate, give the researcher/respondent copies of, or reasonable, supervised access to the research records; and
- Undertake all reasonable and practical efforts to take custody of additional research records or evidence that is discovered during the

course of a research misconduct proceeding, except that where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments.

- 2.8. Retention of Records:** The documents specified in paragraph 2.7.1 are considered project-related records that must be retained for 3 years after the final decision.
- 2.9. Noncompliance:** In the event that the research institution conducting extramural research funded by USDA moneys does not comply with the requirements of the award, grant, or agreement, or the guidelines of this Memorandum and Appendix, the USDA Agency may use any available administrative or other appropriate remedy, including the termination of award(s), suspension and debarment of the institution, recovery of funds, and conducting its own subsequent processes under the Agency's research misconduct procedures. The USDA Agency also may recommend suspension or debarment of the individual that is the subject of the allegation after a finding of research misconduct.

APPENDIX C

DEFINITIONS RELATED TO RESEARCH MISCONDUCT

- 3.1. **Adjudication:** The stage in the response to an allegation of research misconduct when the outcome of the investigation is reviewed, and appropriate corrective actions, if any, are determined. Corrective actions generally will be administrative in nature (e.g., termination of an award(s), debarment, special approvals, recovery of funds, or correction of the research record); however, if there is an indication of violation of civil or criminal statutes, civil or criminal sanctions may be pursued.
- 3.2. **Allegation:** A disclosure of possible research misconduct through any means of communication. The disclosure may be by written or oral statement or other communication to an institutional or USDA official.
- 3.3. **Fabrication:** Making up data or results and recording or reporting them.
- 3.4. **Falsification:** Manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.
- 3.5. **Finding of Research Misconduct:** The conclusion that research misconduct occurred;
- proven by a preponderance of the evidence;
 - that such research misconduct represented a significant departure from accepted practices of the relevant research community; and
 - that such research misconduct was committed intentionally, knowingly, or recklessly.
- 3.6. **Inquiry:** The stage in the response to an allegation of research misconduct when an assessment is made to determine whether the allegation has substance and an investigation is warranted.
- 3.7. **Investigation:** The stage in the response to an allegation of research misconduct when the factual record is formally developed and examined to determine whether to dismiss the case, recommend for a finding of research misconduct, and/or take other appropriate remedies.
- 3.8. **Plagiarism:** The appropriation of another person's ideas, processes, results, or words without giving appropriate credit.
- 3.9. **Preponderance of the evidence:** Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.
- 3.10. **Research:** All basic, applied, and demonstration research in all fields of science, engineering, and mathematics. This includes, but is not limited to, research in

economics, education, linguistics, medicine, psychology, social sciences, statistics, and research involving human subjects or animals regardless of the funding mechanism used to support it. Basic research is defined as systematic study directed toward fuller knowledge or understanding of the fundamental aspects of phenomena and of observable facts without specific application towards processes or products in mind. Applied research is defined as systematic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met.

- 3.10.1. Extramural Research:** Research conducted by any research institution *other than* the Federal Agency to which the funds supporting the research were appropriated. Research institutions conducting extramural research may include Federal research facilities.
- 3.10.2. Intramural Research:** Research conducted by a Federal Agency, to which funds were appropriated for the purpose of conducting research.
- 3.11. Research Institutions:** All organizations using Federal funds for research, including, for example, colleges and universities, intramural Federal research laboratories, Federally funded research and development centers, national user facilities, industrial laboratories, or other research institutes.
- 3.12. Research Misconduct:** Fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion.
- 3.13. Research Record:** The record of data or results that embody the facts resulting from scientific inquiry, and includes, but is not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

APPENDIX D REFERENCES

- 4.1.** Federal Register, Volume 65, page 76260, December 6, 2000. "Federal Policy on Research Misconduct" current edition.
- 4.2.** Freedom of Information Act, 5 U.S.C. 552 note.
- 4.3.** Privacy Act, 5 U.S.C. 552a *et seq.*